

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 945 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GAFAR MUSABHAI KHATKI

Versus

STATE OF GUJARAT

Appearance:

MR ZUBIN F BHARDA for Petitioner

MS GAJJAR APP for Respondents.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

On 13th February, 1998, the Assistant Commissioner of Police (Western Division) Rajkot City, issued a notice upon the petitioner to show cause, why for the reasons recorded therein, no action be taken against him under section 56 (a) of the Bombay Police

Act, 1951 (hereinafter referred to as 'the Act'), and why he should not be ordered to be externed from Rajkot City, Rajkot (Rural), Surendranagar and Jamnagar Districts. Pursuant to the said show cause notice, on 2nd June, 1998, the Deputy Commissioner of Police, Rajkot City made an order externing the petitioner from the limits of Rajkot City Rajkot (Rural) and Surendranagar Districts for a period of two years. The order of externment has been confirmed in appeal by the State Government on 15th May, 1998. The Externing Authority, while forming an opinion under section 56 of the Act, has referred to the statements given by the witnesses who had suffered on account of the nefarious activities of the petitioner on condition that their names and other particulars shall not be disclosed. The opinion formed on the basis of such statements is clearly not an adequate opinion as envisaged under section 56 of the Act. The courts have time and again held that opinion formed on such information would not be sufficient compliance of the provisions contained in section 56 of the Act (reference can be had to the judgment of the Supreme Court in re NAWABKHAN ABBASKHAN VS STATE OF GUJARAT {AIR 1974, SC 1471, at page-1474}). The order of externment based on such opinion is, therefore, bad and illegal.

Petition is, therefore, allowed. The order of externment dated 2nd June, 1998 (Annexure-A) and the appellate order dated 15th May, 1998 (Annexure-C) to the petition are quashed and set aside. Rule is made absolute.

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JOSHI